

**Town of Milford  
Zoning Board of Adjustment Minutes  
October 3, 2013  
Case #2013-15  
Carole M. Colburn Revocable Trust  
Special Exception**

Present: Fletcher Seagroves, Chairman  
Laura Horning, Vice Chair  
Zach Tripp  
Kevin Taylor  
Michael Thornton, Alternate

Absent: Bob Pichette  
Len Harten, Alternate  
Paul Butler, Alternate

Secretary: Peg Ouellette

The applicant, Carole M. Colburn Revocable Trust, owner of Map 51 Lot 1, Osgood Road, in the Residence "R" district, is requesting a special exception from Article VI, Sections 6.02.6:A.6 to impact 10,800 SF of wetlands and 6.02.6:B to impact 19,762 SF of wetland buffer for the construction of a proposed roadway. This is a re-application of cases #27-07 and #27-08, both granted in 2007.

Minutes approved on November 21, 2013

Fletcher Seagroves, Chairman, opened the meeting by stating that the hearings are held in accordance with the Town of Milford Zoning Ordinance and the applicable New Hampshire Statutes. He continued by informing all of the procedures of the Board and introduced the Board. He read the notice of hearing into the record. The list of abutters was read. Anthony Belanger, an abutter, was present.

Randolph Haight of Meridian Land Services, representing the applicant, gave applicant's presentation:

This is a proposed road from Osgood Rd through the property and continuing to Woodhawk Dr. There are two crossings across wetlands and water breaks in two sections. They will put in 4-ft. box culverts for animals to traverse. It was approved by the Town in 2007 and DES for a dredge and fill permit. It didn't go forth because of the economy; they are now re-applying. He described the disturbance on the map and stated that there will be 10,000+ SF of wetlands and 19,700+SF of buffer disturbance. The only difference from the original plan is that there will be one less lot.

Z. Tripp asked, if the wetland areas are at a lower elevation and the road higher.

R. Haight said yes.

Z. Tripp asked if the wetlands were marsh or standing water and if they were seasonal.

T. Ferwerda came forward and said they are forested wetlands. During the wet season there will be some water in low spots but he assumed it was dry now. There is no defined swale or stream-type flow.

F. Seagroves asked if this was going to be a permanent impact on the wetlands.

R. Haight responded it would. In 2007 they received an Alteration of Terrain permit which is still valid.

L. Horning asked about maintenance and cleaning of the culverts.

R. Haight responded they will not get dirty. They are at 4 ft. for the animals; for water they would need possibly 12 inches.

L. Horning asked if there was no possibility of problems during flood season.

R. Haight said no; it is oversized.

Z. Tripp asked if they are 4 ft. tall.

R. Haight said they are four ft. wide and ft. tall.

T. Ferwerda clarified that they are square box culverts. 1 ft is buried, so it will be 3 ft tall and 4 ft wide.

F. Seagroves inquired if they had state permits.

R. Haight said it had lapsed and they will re-apply. The alteration of terrain permit was still valid.

F. Seagroves asked if they had been to the Conservation Commission.

R. Haight said in 2007 they got a letter in support. The Commission voted to re-issue that same letter.

F. Seagroves asked for any further questions from the Board. There were none, so he opened the meeting for public comment.

Anthony Belanger of 23 Nye Dr, an abutter, asked if the wetlands were going to be solidified with some type of form or sandy loam, or whatever is specified and would they no longer be wetlands anymore.

T. Ferwerda said the only part that will not be wetlands will be the road. The culverts will allow water to continue to flow downstream, whatever flow there was. The only loss of wetlands is the 10,000 SF where the road crosses the wetlands.

A. Belanger asked if that was where the culverts will be.

T. Ferwerda said correct; the idea of the box culverts is to put wetlands flow similar to what is there in the bottom of the boxes to try to simulate the wetlands underneath the road as best as possible.

A. Belanger said, looking at the culverts, it shows a fill line of LVP which is complex stone at a certain grade; that is not filling in with different material than already there?

T. Ferwerda said the fill will be placed where the road crosses the wetland.

F. Seagroves said they will disturb some wetland to make the road and then bring back the remaining wetlands.

F. Seagroves asked for any further comments from the public. There were none, so he closed the public portion of the meeting. He read a memo dated 9/13/13 to the ZBA stating the Milford Conservation Commission reviewed this application at their 9/12/13 meeting and recommended approval of the project as presented.

R. Haight read the application into the record:

A Special Exception as specified in Article VI, Sections 6.02.6:A:B of the Zoning Ordinance, is requested to permit: Subdivide Lot 51-1 into 27 residential building Lots with 2 Open Space non-building lots. The proposed subdivision road will cross 2 forested wetland areas, impacting a total of 10,800 sq. ft. of wetland and 19,762 sq. ft. of wetlands buffer for the construction of a roadway.

**Description of proposed use:**

**1. The proposed use shall be similar to those permitted in the district:**

The Site is located in the Residential "R" District, which allows 2 acre Lots & Open Space Subdivisions. The proposed Subdivision will be similar to the current residential uses in the area.

**2. The specific site is an appropriate location for the proposed use because:**

The Development is an allowed use by Zoning and the Site is conducive to Residential Development. The Site will be providing a connection to an adjacent Subdivision road system.

**3. The use as developed will not adversely affect the adjacent area because:**

The proposed use is similar to the adjacent area uses and provides a large amount of Open Space that is contiguous to existing Open Space & Conservation lands.

**4. There will be no nuisance or serious hazard to vehicles or pedestrians:**

The Proposed Road and Access conform to the Town of Milford's sight distance regulations & provides an additional connection to an adjacent Subdivision.

**5. Adequate appropriate facilities will be provided for the proper operation of the proposed use because:**

The Subdivision will comply with all applicable Local, State & Federal standards. A Stormwater Management Plan has been developed for this Project.

T. Ferwerda then read the application regarding the seven criteria for Special Exception regarding wetlands:

**1. The need for the proposed project;** The project is necessary to create an access road to the buildable areas of the existing Lot 51-1.

**2. The plan proposed is the alternative with the least impact to the wetlands, surface waters and/or their associated buffers.** The wetlands disturbance associated with the proposed road are the result of providing access to the Site that will skirt up to and cross the wetlands at the narrowest points to minimize the wetlands & buffer disturbances. The proposed slope grading in the wetlands disturbance areas is 2:1. Straw bales are proposed in conjunction with silt fences for erosion control during construction. Both access road crossings will utilize box culverts, which are the preferred alternative in maintaining wetland habitat continuity.

**3. The impact on plants, fish and wildlife;** No rare, threatened, endangered, special concern or migratory species were observed by Meridian Land Services, Inc. during any site visits. A request for a NH Natural Heritage database check has been sent to confirm the existence or non-existence of any of these species in the project area. A negative response is enclosed. Four foot diameter culverts are to be installed to allow wildlife to pass through.

**4. The impact on the quantity and/or quality of the surface and ground water;** No impacts are anticipated to affect the quantity or quality of surface or groundwater from this project. The proposed erosion control measures to control runoff and sedimentation for this project have been approved by NHDES, see Alteration of Terrain permit #WPS-8016.

**5. The potential to cause or increase flooding, erosion or sedimentation;** The majority of the water movement within the areas of the crossings is subsurficial. It is likely that water will continue to flow through the soil under the proposed fill areas after the construction completion. No flooding impacts are anticipated from this project, as the proposed culverts will provide adequate flow capabilities in the event of soil flow restriction. Erosion and sedimentation controls are proposed to control roadbed erosion and sedimentation that might occur during construction.

**6. The cumulative impact that would result if all parties owning or abutting a portion of the affected wetland, wetland complex and/or buffer area were also permitted alteration to the wetland and buffer proportional to the extent of their property rights.** Some of the adjoining parcels within the wetland complex have been previously developed with residential dwellings. Adjoining parcels also appear to have “dry” access to buildable portions of the lots. Even In the event that similar crossings were required on adjoining lots, the functional value of the wetlands would remain significantly intact due to the size of the culverts and the use of box culverts in particular areas.

**7. The impact of the proposed project on the values and functions of the total wetland or wetland complex.** The proposed crossings will have minimal impacts to the values and function of this wetland area. The existing forested vegetation in the wetland areas will remain undisturbed and lie within the project’s Open Space areas, with the exception of the clearing for construction. The project’s runoff would be treated by the treatment swales prior to entering the wetland areas and there would be no negative impact.

Cornelia Roy came forward asking to speak. She stated she arrived late because the elevator was locked and she had to drive around for a parking space. The Chair allowed her to speak. She and her husband own property at 481 Osgood Rd. In 2007, they had commented that this construction affects their wetlands which they have nurtured for 20 years. She did not know if it went to the Conservation Commission at that point. They have probably been the only ones affected by the construction, and around 2000 when Woodhawk Dr. went in they experienced significant problems with groundwater and surface water and spent several thousand dollars to remedy. There is a vernal pool between this property and hers which is home to many species that, if not endangered, are threatened. The entire area is part of a major wildlife corridor from Massachusetts and into NH. Had this been addressed in any studies?

F. Seagroves stated it didn’t impact the wetlands.

C. Roy stated they were part of her wetlands; they drain in.

F. Seagroves stated the question regarding animals had been answered.

Discussion between R. Haight and C. Roy followed regarding her parcel relative to the proposed project and wetlands.

F. Seagroves suggested that Mrs. Roy go before the Planning Board to raise the issue.

R. Haight stated the applicant will be applying to the Planning Board and she will be notified.

C. Roy stated she didn’t want to spend thousands more dollars. There are bobcat, moose and bear up there and she would like to see them minimally impacted.

L. Horning read from the Natural Heritage report.

C. Roy stated her doubts as to its validity. She was not against the project itself.

F. Seagroves asked if there were any additional questions. There were none.

He moved on to the discussion of Special Exception the requirements.

**Is the use permitted within the district?**

L. Horning said according to the zoning ordinance it is allowed.

Z. Tripp said it is allowed. The applicant did good job answering all the requirements of 6.02.7. There is a need for the proposed project and the applicant went through a good amount of work and study to minimize impact to wetlands. Per the Conservation Commission letter, all house lots are out of the wetlands. Regarding the potential cause of erosion and sedimentation, water is mostly underground and with 3x4 culverts water would have plenty of room to move. Regarding the cumulative impact, this is difficult to answer. Looking at all the wetlands on that lot and the percentage of disturbance, there would probably be minimal impact. There would be no impact on values and function of the total complex.

K. Taylor said it is allowed in the Ordinance. Nothing changed from 2007 and hopefully the applicants have heard the concerns of the one abutter and will do everything they can to make sure impact isn't severe.

M. Thornton said they have one less lot than before. They are compliant with all rules and regulations that existed before and nothing changed except now they have the money to proceed.

F. Seagroves said the use is allowed by the ordinance by Special Exception. Yes, there are special conditions present under which a special exception may be granted? It seems they have done a fairly decent job. They are going to impact some wetlands but looks like they are trying to have the least amount of impact. The Conservation Commission thought it was a good plan. It still needs to be approved by the State and they need to go back to the Planning Board. It should be noted that the Planning Board should listen to and answer some of the concerns, which he knows they will. He didn't see reason not to grant it.

F. Seagroves asked for any further questions from the Board. There were none, so he proceeded to a vote.

**Is the exception allowed by the ordinance?**

L. Horning – yes; K. Taylor – yes; Z. Tripp – yes; M. Thornton – yes; F. Seagroves – yes

**Are special conditions present under which the exception may be granted?**

Z. Tripp – yes; K. Taylor – yes; M. Thornton – yes; L. Horning – yes; F. Seagroves – yes

F. Seagroves requested a motion to approve.

K. Taylor moved to approve Case #2013-15.

Z. Tripp seconded.

**FINAL VOTE:**

**L. Horning – yes; M. Thornton – yes; Z. Tripp – yes; K. Taylor – yes; F. Seagroves – yes**

Chairman Seagroves informed the applicant's representative they had been approved and reminded them of the 30-day appeal period and need to go back to the Planning Bd.